

U.S. Department of Labor
Office of Administrative Law Judges
7 Parkway Center
875 Greentree Road, Room 290
Pittsburgh, PA 15220

DATED: MARCH 3, 1999

Case No. 1996-ERA-37

In the Matter of

DAVID CHARVAT
Complainant

v.

EASTERN OHIO REGIONAL
WASTEWATER AUTHORITY
Respondent

RECOMMENDED DECISION AND ORDER AWARDING ATTORNEYS' FEES

A Recommended Decision and Order was issued in the above-captioned case on July 20 1998, providing relief under the employee protection provisions of the Water Pollution Control Act (CWA) 33 U.S.C. § 1367 (a) and the Safe Water Drinking Act (SWDA), 42 U.S.C. § 300j-9(i). The Decision and Order recommended that Complainant be reinstated to his former position, receive back pay from the date of discharge in the amount of \$175,019.66, receive \$10,000 for exemplary damages, and \$5000 for emotional distress. Complainant was awarded a total of \$190,019.66 on his claims and he is seeking \$863,772.90 in attorneys' fees and costs.

On September 1, 1998, Complainant's counsel, Michael D. Kohn, Esq., E.

[Page 2]

Dennis Muchnicki, Esq., and Richard R. Renner, Esq., submitted Complainant's Application for Attorneys' Fees and Costs. On October 5, 1998, Respondent submitted

Respondent's Objections and Memorandum in Opposition to Complainant's Request for Attorneys' Fees and Costs. On October 19, 1998, Complainant submitted Complainant's Response to Respondent's Objections to Complainant's Application for Attorneys' Fees and Costs. On November 6, 1998, Respondent submitted Motion to Strike and Reply of EORWA to the Response Brief of Complainant to Objections to the Attorneys' Fees and Costs Request. Complainant requests a fee of \$325 an hour for 706 hours for a total of \$229,450 for Michael D. Kohn; \$300 an hour for 868.1 hours for a total of \$260,430 for E. Dennis Muchnicki; and \$225 an hour for 1192.3 hours for a total of \$262,284 for Richard R. Renner; plus an additional \$111,608.90 in related costs and expenses for a total fee request of \$863,772.90.

First, Respondent requests that the application for attorneys' fees be denied in its entirety as the fees for this claim are so exorbitant they shock the conscious. Respondent argues that this claim was a simple employment dispute and the fees Complainant is seeking are outrageously excessive. Respondent cites *Brown v. Stackler*, 612 F.2d. 1057 (7th Cir. 1980); *Sun Publishing Co., Inc. v. Mecklenberg News, Inc.*, 823 F.2d. 818 (4th Cir. 1987); and *Fair Housing Council of Greater Washington v. Landow*, 999 F. 2d. 92 (4th Cir. 1993) in support of its argument.

Denial of the fee application in its entirety is an extreme step in and of itself and can be viewed as an abuse of discretion. In *Brown*, counsel sought 800 billable hours for primarily filing requests for extensions of time while awaiting the outcome of a similar case that would dispose of issues in *Brown* making its way through the court system. *Brown, supra*, 612 F.2d. at 1058. In *Sun Publishing*, the plaintiff had submitted a third supplemental request for fees which shocked the conscience of the court. *Sun Publishing, supra*, 823 F.2d. at 820. In *Fair Housing*, the fee petition was denied because there were serious deficiencies in the record and counsel's records were not adequately detailed. In the case at hand, there was a twenty-day hearing, this is counsels' first fee application, and it appears that the records are adequately detailed to make a determination as to the reasonableness of the requests applying the relevant factors under the law. Denial of the fee application in its entirety would be extreme and an abuse of discretion.

REASONABLE ATTORNEY'S FEES

Respondent objects that the fees Complainant's counsel are seeking are unreasonable. The correct method for determining attorneys' fees in a whistleblower discrimination complaint arising under an environmental protection statute is the lodestar method, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate. *Jenkins v. United States Environmental Protection Agency*, 92-CAA-6 (Sec'y Dec. 7, 1994) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). Michael Kohn seeks \$325 an hour for 706 hours of work, E. Dennis Muchnicki seeks

\$300 an hour for 868.1 hours of work, Richard Renner seeks \$225 an hour for 1192.3 hours of work.

Contingency Fee

Respondent first argues that a contingency fee between Complainant and his attorneys should be used as a cap on any award of fees to Complainant's counsel, stating that the Administrative Review Board's decision in *McCafferty v. Centerior Energy*, 96- ERA-6 (ARB Sept. 24, 1997) supports this argument. The Board held that the "reasonably incurred" language in the Energy Reorganization Act's provision for attorney's fees meant that any fee would be capped by a fee arrangement Complainant had made with his attorneys. Complainant argues that *McCafferty* has a limited effect and that the Administrative Review Board's decision in *Van Der Meer v. Western Kentucky University*, 95-ERA-38 (ARB April 20, 1998) makes it clear that a contingency fee is not a cap on an award of statutory attorneys' fees. In fact, Complainant's counsel argues that an a contingency fee agreement should enhance a statutory award of attorneys' fees.

The Board's decision in *McCafferty* does have a limited effect. In *McCafferty*, Complainants had agreed to pay their counsel a total fee of \$30,000 for the total handling of the case, from filing the administrative complainant through any appeal to the U.S. Supreme Court. See *McCafferty, supra*, slip. op. at 24. Complainants had agreed to pay this fee, irrespective of whether they won or lost. The Board held the that "reasonably incurred by Complainant" language limited their attorneys' fees to \$30,000, stating "Here Complainants have only become liable or subject to \$30,000 in attorney's fees, win or lose, no matter how much their case is litigated. We would have to ignore the specific language in the statute to reach the conclusion that Centerior is liable to pay more than Complainants can ever be liable for." *McCafferty, supra*, slip. op. at 25. Unlike the Complainants in *McCafferty*, there is no evidence that Complainant ever agreed to pay his attorney a set fee, win or lose. Rather, in his affidavit, Complainant states that he hired his attorneys on a contingency.

McCafferty does not affect contingency fee arrangements as evidenced by the Board's decision in *Van Der Meer*. In *Van Der Meer*, Complainant had entered into a forty percent contingency fee agreement with his counsel. See *Van Der Meer, supra*, slip. op. at 9. The Board stated that the "lodestar method" is the proper method to use in determining the amount of an attorney fee award under the environmental whistleblower statutes. See *Van Der Meer, supra*, slip. op. at 9. The Board quoted *Lederhaus v. Paschen & Midwest Inspection Service, Ltd.*, 91-ERA- 13 (Sec'y Jan. 13, 1993) that "Respondents are liable only for reasonable attorney's fees no matter what Complainant may have contracted to pay his attorney." Thus, any contingency fee arrangement Complainant had with his attorneys is irrelevant as the proper method for determining a reasonable fee is the lodestar method. However, it is noted that Complainant's

counsels' argument that a contingency fee arrangement should be used to enhance an award of attorney's fees is in direct opposition to the United States Supreme Court's holding in *City of Burlington v. Dague*, 505 U.S. 557 (1992), which held that attorney fee awards could not be enhanced above the lodestar method under the federal fee shifting statutory provisions. Therefore, any contingency fee arrangement between Complainant and his counsel can not be used to enhance the attorney fee award.

Hourly Rate

Respondent objects that Complainants' counsel hourly rates are unreasonable. Michael Kohn has requested an hourly rate of \$325. Kohn has been an attorney for thirteen years and is a partner at a firm with three attorneys based in Washington, D.C. Mr. Kohn states that he is an expert in the field of whistleblower litigation. Using the parties' exhibits, *Altman & Weil's 1994 Survey of Economics*,¹ and considering such factors as the location of Mr. Kohn's firm, his years of experience, his expertise, the complexity of the issues presented in this case and the success on those issues, and what Mr. Kohn has been awarded in attorneys' fees in other whistleblower discrimination cases before this agency,² I find that \$250 is a reasonable hourly rate for services rendered to Complainant in this case.

E. Dennis Muchnicki has requested an hourly rate of \$300. Mr. Muchnicki is a sole practitioner in Dublin, Ohio, which is a suburb of Columbus, Ohio. He has been an attorney for twenty-four years and he is an expert in environmental law. Using the parties' exhibits, *Altman & Weil's 1994 Survey of Economics*, and considering such factors as the location of Mr. Muchnicki's firm, his years of experience, his expertise, the complexity of the issues presented in this case and the success on those issues, and attorney fee awards in other whistleblower discrimination cases before this agency, I find that \$200 is a reasonable hourly rate for services rendered to Complainant in this case.

Richard Renner has requested an hourly rate of \$225. Mr. Renner is a founding partner of Tate & Renner, a firm of two attorneys located in Dover of Ohio. Mr. Renner has been an attorney for seventeen years. Using the parties' exhibits, *Altman & Weil's 1994 Survey of Economics*, and considering such factors as the location of Mr. Renner's firm, his years of experience, his expertise, the complexity of the issues presented in this case and the success on those issues, and attorney fee awards in other whistleblower discrimination cases before this agency, I find that \$150 is a reasonable hourly rate for services rendered to Complainant in this case.

Excessive Duplication

Respondent argues that counsels' attorney fee petition contains excessive

duplication, as there were times when two or three attorneys billed time for tasks that could have been accomplished by one attorney. Respondent first objects to more than one attorney billing time for various depositions taken in this matter.

On September 13, 1996, attorneys Renner and Muchnicki each billed 9.7 hours for attendance at the depositions of Michael Thomas, David Thomas, James Tekely, and Dr. Lavapies. Respondent objects that Muchnicki's time is duplicative as Renner questioned three out of the four witnesses. More than one attorney attending a deposition is excessive. As Renner questioned three out of the four witnesses, his time shall be reduced by one-fourth to 7.3 hours and Muchnicki's time shall be reduced to 2.4 hours.

On January 7, 1997, Renner billed 6.2 hours for attendance at the depositions of Paul Pollock and James Tekely. Muchnicki billed 7.1 hours for attendance at the deposition of Paul Pollock and 1.1 hours for attendance at the deposition of James Tekely. Respondent objects as Muchnicki questioned Pollock and Renner questioned Tekely. Respondent also objects to the two hour discrepancy between the number of hours each attorney billed for the depositions. Muchnicki responded that he stayed an additional two hours to complete the deposition of Pollock. Therefore, 1.1 hours of Muchnicki's time is stricken for attending Tekely's deposition and 5.1 hours of Renner's time is stricken for attending the deposition of Pollock.

On July 2, 1997, Renner and Muchnicki each billed time for attendance at the depositions of two witnesses, Tom and Rebecca Morgan. Respondent objects as only Muchnicki questioned both witnesses. As Renner was merely an observer, the 6.6 hours he billed for attending the depositions and the 2.8 hours he billed in travel time is stricken.

On June 23, 1997, Respondent objects because Kohn billed .7 hours for attendance by telephone at a deposition. As Kohn stated in his affidavit that he did not charge for telephone attendance at depositions to avoid the appearance of duplication, Respondent's objection is well taken. On June 24, 1997, Renner billed 1.6 hours for the deposition of Mike Burns and 2.6 hours for the deposition of Chuck Probst. Muchnicki billed a total of 4.2 hours for attendance at the depositions of Mike Burns and Chuck Probst. Muchnicki questioned Burns and Renner questioned Probst. Thus, Renner's time will be reduced by 1.6 hours for attending the deposition of Mike Burns and Muchnicki's time will be reduced 2.6 hours for attending the deposition of Chuck Probst.

Respondent next cites several instances where each attorney billed time for attending the hearing but was not examining witnesses. I am reluctant to disallow these charges as the attorneys performed as a team at the hearing, frequently consulting with one another over the examination of witnesses and the introduction of evidence.

Respondent argues that the number of hours Complainant's attorneys spent on this case is unreasonable and should be reduced by at least fifty percent as they did not succeed on all of the issues, in particular the amount of various damage awards that were sought. However, counsel did succeed on the merits and thus an overall reduction is not justified.

Respondent objects that the time Complainant's attorneys spent on particular tasks was unreasonable. Respondent first objects to the amount of time billed in preparing Complainant for his testimony. Between August 16-21, 1997, Kohn billed a total of 50.4 hours in preparing Complainant for his direct testimony. Renner billed a total of 6.1 hours between August 19-22, 1997. Muchnicki billed a total of 4.5 hours between August 21-22, 1997. Complainant's direct testimony took place August 21-22, 1997 and lasted 11 hours. Kohn billed 19 hours between September 6-8, 1997 in preparing Complainant for cross-examination. Muchnicki billed a total of 10.3 hours between September 6-7, 1997. Renner billed a total of 7.7 hours between September 6-8, 1997. Complainant's cross-examination and re-direct took place on September 8, 1997 and lasted 6.9 hours. Complainant's attorneys billed 98 hours in preparing him for 17.9 hours of testimony. Although Kohn conducted the questioning of Complainant, his time in particular appears excessive, particularly of an attorney of his level of expertise in whistleblower litigation, and his time shall be reduced by half.

Respondent objects to the amount of time it took for Complainant's counsel to prepare the brief as excessive. Kohn billed a total of 36.5 hours between December 17, 1997 and March 17, 1998 for preparing the brief; Muchnicki billed a total of 43.2 hours between December 17, 1997 and March 17, 1998; and Renner billed a total of 52.3 hours between December 17, 1997 and March 17, 1998 plus an additional 7 hours of paralegal time. Complainant's attorneys billed for a total of 132 hours of time in preparing a 45 page brief. This amount of time is excessive given the number of years each attorney has been practicing, their levels of expertise, and their familiarity with the case. Each attorney's time shall be reduced by a third.

Respondent objects to the amount of time it took for Complainant's counsel to prepare the reply brief as excessive. Kohn billed a total of 14.7 hours between March 20 and April 21, 1998 for preparing the reply brief; Muchnicki billed a total of 10.6 hours between March 18 and April 20, 1998; and Renner billed a total of 29.6 hours between March 18 and April 21, 1998. Complainant's attorneys billed a total of 54.9 hours for preparing a 25 page reply brief. Again, this amount of time is excessive based on their years of practice, the level of their expertise and their familiarity with this case. Each attorney's time shall be reduced by a third.

Respondent objects to time billed in preparing the fee petition, stating that it is not compensable. However, counsel is entitled to compensation for time reasonably spent in preparing a fee petition. *See Larry v. The Detroit Edison Co.*, 86-ERA-32 (Sec'y May 19, 1992). Respondent also objects that the amount of time Complainant's counsel spent in

preparing the fee petition is excessive. Kohn billed a total of 44.65 hours for preparing the fee petition between July 30 and August 31, 1998; Muchnicki billed a total of 42.25 hours between July 27 and August 31, 1998; and Renner billed a total of 30.6 hours between June 19 and August 30, 1998. Renner also billed an additional 93.85 hours for work his office manager performed on the fee petition. Complainant's attorneys billed a total of 119.5 hours for preparing the fee petition and an additional 93.85 hours for work performed by an office manager in compiling the fee petition. This amount of time is excessive if the attorneys were keeping contemporaneous time records and contemporaneous records of their costs. Each attorney's time shall be reduced by half. The office manager's time shall be addressed in the costs section.

Respondent asserts that time Complainant's counsel spent preparing a cross-appeal to the Administrative Review Board is not compensable at this level as Complainant has not yet succeeded at that level. If counsel is successful at the Administrative Review Board, they can submit a petition to the Board for all of their time spent performing work before the Board, thus the hours spent on Complainant's cross-appeal are stricken. Kohn billed 3.6 hours for preparing and filing Complainant's cross-appeal, Muchnicki billed 5.15 hours and Renner billed 13.95 hours.

Lack of Specificity in Entries

Respondent maintains that several of Complainant's attorneys' entries in their fee petition lack sufficient information to determine what work was performed and whether that work was necessary to the litigation. Specifically, each of complainant's attorneys has several entries for telephone calls to and from Complainant, one another, and others that contain no description of what the telephone call was about or how it pertained to this case; several entries for reviewing, analyzing, reading and writing faxes, letters, memos, and e-mails from Complainant, one another and others that contain no description of how the communication pertained to this case; several entries for legal research that does not state what the research was or how it pertained to this case; and document review that does not state what the documents were or how they pertained to this case.

Complainant's counsel argues that the entries are sufficient and that it would violate attorney-client privilege to provide more information. However, the Administrative Review Board has stated that it requires an itemized list that includes the date on which an attorney's time was expended, the amount of time expended, and a specific description of the tasks undertaken by the attorney at that time. *Pillow v. Bechtel Construction, Inc.* 87-ERA-35 (ARB Sept. 11, 1997) (Emphasis added) The Secretary has disallowed time where the hours expended were reasonably documented but a number of descriptions were unduly abbreviated which precluded a determination of whether or not they were justified. *See Jenkins v. Environmental Protection Agency*, 92-CAA-6 (Sec'y Dec. 7, 1994).

Review of the attorneys' entries is further complicated because they have represented Complainant in actions before other tribunals arising out of his termination and Complainant's trio of attorneys are representing two of Complainant's co-workers against Respondent in actions pending before this agency. The Administrative Review Board has stated that in addition to attorney time records that indicate the date, time and duration of a specific activity, each activity must be identifiable as pertaining to the case. *Van Der Meer, supra* (slip. op. at pg. 9).

Complainant's argument is undermined by the fact that several entries did contain enough of a description to determine whether the work performed was connected to and necessary to this action without violating attorney-client privilege. It is noted that there appears to be no rhyme or reason for what received a specific description and what did not. Therefore, I am disallowing 73.25 hours billed by Kohn, 57.9 hours billed by Muchnicki, and 217.7 hours billed by Renner for various telephone calls, teleconferences, faxes, letters, e-mails, memos, legal research, and document review entries that did not contain a description specific enough to determine whether the work was justified or connected with this action.

Time Spent on Other Matters

Respondent objects that attorneys Muchnicki and Renner have included time in their fee petitions that was spent representing Complainant in actions before other tribunals that were not necessary to further his claim before this agency. The Administrative Review Board held, in a case where complainant's attorneys represented complainant in several causes of action, that attorney's fees are to be awarded for expenses reasonably incurred 'for or in connection with the bringing of the complaint on which the order was issued'. *McCafferty v. Centerior Energy* 96-ERA-6 (ARB Sept. 24, 1997). Therefore, 32 hours Muchnicki billed for time spent on other matters shall be disallowed and 13.15 hours Renner included in his fee petition for time spent on other matters shall be disallowed.

Respondent also objects to time billed by Renner before Complainant was terminated. In Renner's affidavit it stated that he was not retained to represent Complainant in challenging his termination until September 26, 1995. As it is Complainant's termination that gave rise to his cause of action, 4.1 hours that Renner charged before September 26, 1995 are disallowed.

Clerical Services

Respondent objects to 42.9 hours of time Renner billed performing clerical services. Complainant concedes that Renner should not be compensated at his full hourly rate for performing these services and suggests Renner be compensated at half of his hourly rate. The Supreme Court in *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) stated:

"Of course, purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them. What the court in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir 1974), said in regard to the work of attorneys is applicable by analogy to paralegals: 'It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.'"

However, there is no evidence that Renner did not have other help available to perform these tasks. As matter of fact, there is evidence to the contrary as he has submitted time for three paralegals and an office manger to be compensated for work they performed in connection with this case. There was no need for Renner to perform these tasks as they could have been performed by a member of his staff. Accordingly, the 42.9 hours Renner billed for performing clerical work is disallowed. *See also Doyle v. Hydro Nuclear Services*, 89-ERA-22 (ALJ July 16, 1996) (clerical work performed by an attorney is not recoverable).

Lodestar

As stated above, the lodestar is a reasonable hourly rate multiplied by a number of hours reasonably expended in the litigation. For Kohn, 554.65 hours at \$250 an hour equals \$138,662.50, which is a reasonable fee and shall be awarded. For Muchnicki, 723.35 hours at \$200 an hour equals \$144,670.00, which is a reasonable fee and shall be awarded. For Renner, 839.8 hours at \$150 an hour equals \$125,970.00, which is a reasonable fee and shall be awarded.

REASONABLE COSTS

Complainant is seeking reimbursement for a total of \$111,608.90 in costs arising out of this litigation. Specifically, Complainant is seeking \$70,252.45 in related costs; Kohn is seeking \$20,036.42 in related costs; Muchnicki is seeking \$3,621.90 in related costs; and Renner is seeking \$17,671.29 in related costs. Respondent has several objections. Complainant has withdrawn his requests for reimbursement of computer equipment, tape recorder and a legal handbook, as well as \$118.00 requested in connection with documents sought after the Recommended Decision and Order was issued in this case. This equals \$2,984.41 worth of costs withdrawn by Complainant and leaves \$67,268.04 in contention.

The Administrative Review Board has stated that all claimed costs must be specifically identifiable as pertaining to the litigation. *See Van Der Meer, supra*. The Secretary of Labor has disallowed costs for which an estimation has been given. *Johnson v. Bechtel Construction*, 95-ERA-11 (Sec'y February 26, 1996.)

Costs of Complainant

Respondent objects to \$9,032.10 Complainant is seeking for the services of the law firm of Bricker & Eckler. Complainant retained this firm before he was terminated and his cause of action arose. Bricker & Eckler never performed work before this agency. Further, Complainant pursued several causes of action in different jurisdictions arising out of his employment with Respondent. Therefore, \$9,032.10 for payment to Bricker & Eckler is disallowed.

Respondent objects to \$122.70³ Complainant is seeking as these costs are in connection with another matter. Complainant asserts that costs arising out of his OBES hearing were central to this litigation. There is no evidence that these costs were essential to the litigation. Therefore, the \$122.70 worth of costs spent on another matter are stricken.

Respondent objects to \$75.00 for Ray Stepler, a legal consultant on this case and \$225 for Mike Moses, an attorney supporting Renner. Complainant states that these were consultation fees to attorneys in course of obtaining expert co-counsel. They charged for evaluating the case file and offering advice on how to proceed with the case. This was a reasonable and necessary expense in litigating this matter and it will be allowed.

Respondent objects to \$171 for Klimaski in connection with whistleblowing activity and involving the unethical action of Thomas. Complainant did not respond. There is not a sufficient description to determine who this person was or what this person may have done in this particular case. Therefore, \$171 is eliminated.

Respondent objects to a total of \$4,393.19 for enhancement of tape recordings. Complainant used these tapes as exhibits in this matter. Therefore, these costs are compensable. However, it is noted that both Complainant and Renner included a \$940.96 charge for tape enhancement in their expense reports, so \$940.96 will be omitted from Renner's costs to avoid duplication.

Respondent objects to \$51.50 worth of express mail charges. Complainant states that these charges were related to shipping the tape recordings, which were sensitive material. The Administrative Review Board has held that specific delivery charges incurred in a case are recoverable as costs. *Ishmael v. Calibur Systems, Inc.*, 96-SWD-2 (ARB Oct. 17, 1997) Therefore, these costs are compensable.

Respondent objects to \$50 fee for Sally Bernhart, a paralegal, as duplication as Sally Bernhart is also Renner's paralegal. Complainant states that this fee is not a duplication. While this fee may not be a duplication, paralegal time needs to be recorded in a similar manner to attorney time, meaning contemporaneous records that indicate date, time,

duration necessary to accomplish the specific task, and a description sufficient to identify the task as pertaining to the case. As it is unclear what task was performed and whether or not it was in connection with this case, the \$50 fee shall be eliminated.

Respondent objects to \$3,197.18 of costs for office supplies. Complainant states that these items were necessary to assemble exhibits and organize case files. However, Complainant had three attorneys from three different firms representing him in this case. These costs are part of an attorney's overhead and there is no reason that these costs should have been assumed by Complainant. If Complainant were pro se, these costs might be compensable. Therefore, \$3,197.18 for office supplies is stricken.

Respondent objects to \$2,570.61 of costs for photocopying. Complaint responds that these items were necessary to assemble exhibits and organize case files. Again, this should have been a cost assumed by one of Complainant's attorneys as part of overhead. Also, some of the descriptions indicate that some of these photocopying expenses may have been incurred in one of the other litigations arising out of Complainant's employment with Respondent and not pertaining to the case before this agency. Therefore, the \$2,570.61 worth of photocopying charges is eliminated.

Respondent objects that the \$3,585.40 for travel expenses by Complainant is inflated. Complainant seeks compensation for travel to various locations at \$.325 dollars a mile. Complainant included 216 miles for \$70.20 for travel to and from OBES hearings. These hearings were unrelated to the case and these costs are not compensable. Complainant included 3,192 miles for 12 meetings with Muchnicki which amounts to \$1,037.40 and 2,660 miles for 19 meetings with Renner which amounts to \$864.50. Both Renner and Muchnicki represented Complainant in other matters not pertaining to this case. Therefore, I am reducing these amount by half. I am giving Complainant the benefit of the doubt and allowing him to be compensated for the four trips he made to Washington, D.C. to meet with Kohn. Complainant is requesting compensation for 12 trips to Bellaire for a total of 432 miles for a total of \$140.40 to do document searches or go to BOT meetings. From the description, it is impossible to ascertain whether these trips were for this case or another one of Complainant's cases. Additionally, with three attorneys from three different firms representing him, it is unclear why Complainant had to conduct document searches. This mileage is eliminated from Complainant's costs. Complainant seeks compensation for 192 miles for 12 trips to St. Clairsville for 18 depositions, and document searches at county court and Duff's office. Without a more specific description, it is impossible to ascertain which of these trips is related to this litigation. Therefore, the 192 miles is eliminated. Complainant requests reimbursement for 750 miles for 3 trips to the Ohio Environmental Protection Agency for document searches. Complainant had a separate state whistleblower case with OEPA and it is impossible to ascertain from his description whether those trips were related to this litigation. The 750 miles which amounts to \$243.75 for those trips are not compensable. I find that Complainant's compensable travel charges equal \$2,117.95.

Complainant requests reimbursement for \$2,666.18 worth of telephone calls, teleconferences and faxes to his attorneys. Even for the extended duration of this case, there appears to have been an incredible amount of communication between Complainant and his attorneys. Since there are no details provided about these various telephone calls and faxes, it is impossible to decide what was reasonable and what was not. Even more troublesome is that Complainant had Renner and Muchnicki represent him in several cases in other courts against Respondent and there is no way to discern what costs were accrued in other matters and what costs were accrued in this matter. Therefore, I am cutting this cost in half. Given the length of this litigation, I find that ,333.09 is a reasonable reimbursement for telephone calls and faxes to his attorneys.

Complainant shall be reimbursed for \$49,323.91 of costs reasonably incurred in this litigation.

Costs of Michael Kohn

Respondent objects to the ,707 Kohn is requesting for sending faxes and \$80.80 he is requesting for photocopies. In particular, Respondent objects to the lack of documentation for the fax and copy charges. Complainant responds that these fees are in line with what is charged for these services at Washington, D.C. law firms. Again, absent further detail, it is impossible to determine what was reasonable for this litigation and whether or not these fees should have been considered part of counsel's overhead. Hence, ,787.80 is stricken from Complainant's requested costs. Respondent objects to an entry for \$115 for "Misc. Taxis, porters, tips and cash payments (no receipts available)". As there are no more details about these various charges, this appears to be an estimate. It is also impossible to determine if they are reasonable. Therefore, \$115 is eliminated from Complainant's costs.

Respondent objects to a \$10.00 estimate for postage from 1996 to 1998. This is an estimated cost and it is disallowed. Respondent objects to \$29.32 Kohn is requesting for black binders as it should be part of counsel's overhead. As the binders are office supplies, this cost is stricken.

Respondent objects to \$8,190 for 126 hours of work at \$65 an hour for the paralegal services of Mary Russell. Respondent avers that Mary Russell is not a paralegal, she is the wife of Paul Russell, a witness in this case, and she did not provide a description of the services she performed. Complainant responds by agreeing to reduce Mrs. Russell's rate to \$40 an hour. However, there is no evidence Mary Russell was trained as a paralegal or is a certified paralegal. Her time records include the date she performed work and the number of hours she worked, but do not include a description of the services she performed. This makes it impossible to determine if these services were reasonable, pertaining to this case as this trio of lawyers is also representing Paul Russell against Respondent in a matter pending before this agency, or clerical in nature, which is not

compensable as it is a part of counsel's overhead. Therefore, the \$8,190 request is eliminated from Complainant's costs.

[Page 13]

Kohn requests \$515.85 for telephone costs. However, as the majority of hours he billed for telephone calls were stricken because they lacked a description specific enough to ascertain whether the phone calls were reasonable to this litigation or pertained to this case, and there is no further description provided in his costs, I am reducing this amount by half. I find a cost of \$257.93 reasonable for telephone calls.

Kohn shall be reimbursed for \$9,673.33 of costs he reasonably incurred for this litigation.

Costs of Richard Renner

Respondent has several objections to paralegal time billed by Renner as the work was either clerical in nature, or the description of the work performed was too vague to make a determination as to whether the work was reasonable, not duplicative or pertaining to this case. Sally Bernhart billed 6.8 hours at \$20 an hour for transcribing Complainant's unemployment hearing tapes. This service was clerical and related to another matter, therefore, \$136 is disallowed. Further, 22.15 hours billed at an hourly rate of \$45 is eliminated for copying transcripts, exhibits, and traveling to Staples to purchase binders. These services were clerical in nature and are a part of counsel's overhead.

Renner requests reimbursement for his office manager for 93.85 hours of work at \$45 an hour in preparing the fee petition. Although Complainant's fee petition is voluminous, billing for an two and a half weeks' worth of work in addition to the attorney time billed for compiling the fee petition is excessive. This time shall be cut in half and I find that 46.93 hours is reasonable for compiling the fee petition.

Respondent objects to 14.45 hours of paralegal time for Chad Ascar. He billed 5.7 hours for attending the deposition of Sharon Arakawa and 8.75 hours for analyzing depositions and drafting a memorandum. There is no description of the work performed by Ascar at the deposition, therefore it cannot be determined whether it was necessary for a paralegal to attend this deposition and the 5.7 hours is disallowed. Additionally, as there is no further description of what depositions were reviewed or what issues the memorandum was concerning, 8.75 hours is also stricken.

Renner requests 2.20 hours of paralegal time for Amanda Rasbach for interrogatories and requests for Production of Documents and law library research. These charges were incurred well after the Recommended Decision and Order had been issued and they lack a sufficient description to determine whether or not they were reasonable or pertained to this case.

An additional ,441.27 is being eliminated from Renner's expenses as these charges were for copying, parking, office supplies, payment to other courts, tele-

[Page 14]

conferences, and a fax fee as well as \$400 for an independent paralegal. Based upon their description, it is not possible to determine whether these charges were reasonable or connected to this case. There were no dates, length of time worked, or description of the activity for the paralegal charges. The office supplies are part of counsel's overhead.

Renner requests reimbursement for \$487.35 in fax charges and \$707.43 for telephone charges. As several of the hours Renner billed for telephone calls and faxes were stricken because the entries lacked a description sufficient to make a determination whether those calls or faxes were reasonable or pertained to this case, both of these requests shall be reduced by half.

Renner shall be reimbursed for \$10,698.27 of costs he reasonably incurred in this litigation.

Conclusion

I find that \$250 an hour for 554.65 hours plus \$9,673.22 in related expenses equals a total fee of \$148,335.72 for Michael D. Kohn; \$200 an hour for 723.35 hours plus \$3,621.90 in related expenses equals a total fee of \$148,291.20 for E. Dennis Muchnicki; and \$150 an hour for 839.8 hours plus \$10,698.27 in related expenses for a total fee of \$136,668.27 for Richard R. Renner. Complainant, David Charvat, shall also be paid \$49,323.91 for expenses he incurred in this case.

RECOMMENDED ORDER

IT IS ORDERED THAT the Eastern Ohio Regional Wastewater Authority:

- (1) pay the sum of \$148,335.72 to Michael D. Kohn for services rendered to Complainant in this matter;
- (2) pay the sum of \$148,291.20 to E. Dennis Muchnicki for services rendered to Complainant in this matter;
- (3) pay the sum of \$136,668.27 to Richard R. Renner for services rendered to Complainant in this matter; and
- (4) pay the sum of \$49,323.91 to David Charvat for expenses he reasonably incurred in this case.

DANIEL L. LELAND
Administrative Law Judge

DLL/lab

NOTICE: This Recommended Decision and Order Awarding Attorneys' Fees will automatically become the final order of the Secretary unless, pursuant to 20 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. Such a petition for review must be reviewed by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.8 and 24.9, as amended, by 63 Fed. Reg. 6614 (1998).

[ENDNOTES]

¹ Twenty percent was added to the average standard billing rates in various categories to account for the passage of time.

² Mr. Kohn has never been awarded more than \$285 an hour when appearing before this agency.

³ This amount includes the \$38.65 Respondent objects to elsewhere in his petition for costs not incurred in connection with this case.